

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLAY MARTINEZ,

Plaintiff,

v.

35-50 81ST STREET REALTY LLC, ANTONIOS
FEGGOUDAKIS, LLC, and ANTONIOS
FEGGOUDAKIS,

Defendants.

ORDER

20-CV-3167 (MKB) (SJB)

MARGO K. BRODIE, United States District Judge:

Plaintiff Clay Martinez commenced the above-captioned action on July 15, 2020, against Defendants 35-50 81st Street Realty LLC, Antonios Feggoudakis, LLC, and Antonios Feggoudakis, asserting claims for unpaid overtime under the Fair Labor Standards Act, unpaid straight and overtime wages under the New York Labor Law, and failure to provide appropriate wage notices and statements under the New York Labor Law. (*See generally* Compl., Docket Entry No. 1.) Plaintiff passed away during the pendency of the action, and, on January 19, 2021, Defendants filed a Statement Noting a Party's Death. (Statement Noting a Party's Death, Docket Entry No. 15.) The statement was served by ECF on January 19, 2021, (*id.*), and personally served on Plaintiff's widow Fatima Alencastro on February 3, 2021, (Proof of Service, annexed to Letter to Judge Bulsara dated Feb. 9, 2021, as Ex. 1, Docket Entry No. 16-1). On June 1, 2021, Defendants moved to dismiss the action pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, which requires dismissal when a deceased party's successor or representative does not file a motion for substitution "within [ninety] days after service of a statement noting the death." Fed. R. Civ. P. 25(a)(1); *Kotler v. Jubert*, 986 F.3d 147, 153 (2d Cir. 2021); (Defs.'

Mot. to Dismiss, Docket Entry No. 19). The Court referred the motion to Magistrate Judge Sanket J. Bulsara on June 2, 2021, (Order Referring Mot. dated June 2, 2021), and, by report and recommendation dated June 21, 2021 (the “R&R”), Judge Bulsara recommended that the Court dismiss the action with prejudice pursuant to Rule 25(a) and cautioned that failure to file objections within fourteen days of service of the R&R “waives the right to appeal any judgment or order entered by the District Court in reliance on [the R&R].” (R&R 4–5, Docket Entry No. 20.) The R&R was served on Plaintiff’s widow on June 22, 2021. (Aff. of Service, Docket Entry No. 21.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson*,

Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

Accordingly, the Court dismisses the action with prejudice pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to mail a copy of this Order to Plaintiff’s widow and close this case.

Dated: July 8, 2021
Brooklyn, New York

SO ORDERED:

s/ MKB

MARGO K. BRODIE
United States District Judge